WP(C) 1186/2007

BEFORE

THE HON'BLE MR. JUSTICE B.K.SHARMA

Both the writ petitions have been filed by the same very petitioner, who is the Headmaster of No.312 Batamari L.P. School. While in the first writ petition being W.P. (C) No.1186/2007, he has challenged the order dated 28.2.2007 (Annexure-3 to the writ petition) by which he has been transferred from the school to another school. In the second writ petition being W.P. (C) No.1449/2007, he has challenged the legality and validity of the order dated 14.3.2007 by which he has been placed under suspension.

It is the case of the petitioner that both the impugned orders have been issued by the authorities as a measure of victimization and due to extraneous consideration. According to the petitioner, there is no material to transfer him from the school and place him under suspension.

In the affidavit-in-opposition filed by the respondents in both the writ petitions, it is their stand that the petitioner has been transferred from the school due to misappropriation of fund to the tune of Rs.20,000/- and so also, misappropriation of dietary articles relating to mid-day meal of the school.

According to the petitioner, he has been placed under suspension by the impugned order dated 14.3.2007 to frustrate the interim order passed by this Court on 12.3.2007 in the first writ petition i.e. W.P. (C) No.1186/2007. By the said order, the impugned order of transfer dated 28.2.2007 has been stayed primarily on the ground that there is a ban on transfer of teachers as per the circular issued by the Directorate of Elementary Education. In the affidavit-in-opposition, nothing has been stated about such ban on transfer.

The petitioner has filed affidavits-in-reply to the affidavits filed by the respondents. I have perused the same. I have also gone through the records produced by Mr. S.K. Das, learned Standing Counsel, Education Department.

Mr. D.K. Saikia, learned counsel for the petitioner submits that there being no material and the entire episode being the creation of the District Elementary Education Officer, Nagaon and there being no cross verification of the veracity or otherwise of the complaint lodged against the petitioner, the impugned orders are liable to be interferred with. On the other hand, Mr. S.K. Das, learned Standing Counsel, Education Department submits that there being, prima facie, satisfaction arrived at by the authorities on the allegation of irregularities committed by the petitioner, the petitioner was first transferred and thereafter, he has been placed under suspension.

The records produced by Mr. Das, learned Standing Counsel, Education Department reveals that a note was put up on 14.3.2007 before the authority pointing out the complaint lodged against the petitioner regarding misappropriation of Rs.20,000/- from the school building construction grant and irregularity in distribution of rice for mid-day meal. The complaint was made by 7 individuals on 18.3.2007. It is solely on the basis of the complaint, the note was put up for placing the petitioner under suspension without any cross verification regarding veracity or otherwise of the complaint so lodged. It is on that basis the petitioner has been placed under suspension by the impugned order dated 14.3.2007. The complaint was lodged by one Md. Abdul Maleque and others and the same was received on 14.3.2007 and on the same very date, the petitioner was placed under suspension.

In the affidavit-in-reply filed by the petitioner, various documents have been annexed showing that some of the alleged signatories of the complaint, in fact did not sign the complaint lodged against the petitioner. In this connection, certain affidavits have been filed by the members of the Managing Committee, who allegedly lodged the complaint.

In the affidavit-in-reply, the petitioner has also submitted statement regarding monthly expenditure of mid-day meal. He has also enclosed a certificate from the Gaon Burah certifying proper distribution of mid-day meal. The petitioner has also enclosed the statements of accounts relating to the school fund and the same was verified by the S.I. of Schools and he certified the statements of accounts to be correct and true. The same was done on 10.4.2007. All thes

e materials were not considered while placing the petitioner under suspension and transferring him from the school.

The grounds for placing the petitioner under suspension as well as transferring him from the school to another school is one and the same. However, the records produced by the learned Standing Counsel, Education Department does not indicate any cross verification of the allegation made. Merely because a complaint was submitted, the authority ought not to have taken recourse to the drastic action without any cross verification of the materials on record. From the affidavit-in-reply filed by the petitioner and the materials furnished by him, it appears that there is room to believe that the complaint lodged against the petitioner is fictitious.

While it is true that the authorities are the best judge to transfer teachers and to take disciplinary action, but at the same time, the same can be taken recourse to upon proper verification of the materials and not on conjectures and surmises.

In view of the above, I direct the Commissioner and Secretary to the Government of Assam in the Education Department to examine the matter consistently with the observations made above and then, to pass appropriate order in respect of the grievance raised by the petitioner regarding the impugned orders of transfer and suspension. This shall be done within one month from the date of furnishing a certified copy of this order by the petitioner to the said Commissioner and Secretary along with the relevant documents.

With the above direction, the writ petition is disposed of.